

Department of Veterans Affairs

§ 3.450

is effective for a period prior to date of receipt of claim, any additional dependency and indemnity compensation payable by reason of need for aid and attendance may also be awarded for any part of the award's retroactive period for which entitlement to aid and attendance is established. When the parent is provided hospital, institutional or domiciliary care at Department of Veterans Affairs expense, the effective date will be the date of departure therefrom.

(Authority: 38 U.S.C. 501; 5110(d))

[45 FR 34887, May 23, 1980]

§ 3.405 Filipino veterans and their survivors; benefits at the full-dollar rate.

Public Laws 106-377 and 108-183, which provide disability compensation and dependency and indemnity compensation at full-dollar rates to certain Filipino veterans and their survivors, are considered liberalizing laws. As such, the provisions of 38 CFR 3.114(a) apply when determining the effective date of an award. If the requirements of § 3.114(a) are not satisfied, then the effective date of an award of benefits at the full-dollar rate under § 3.42 will be determined as follows:

(a) *Initial entitlement to full-dollar rate.* The latest of the following:

- (1) Date entitlement arose;
- (2) Date on which the veteran or survivor first met the residency and citizenship or permanent resident alien status requirements in § 3.42, if VA receives evidence of this within one year of that date; or
- (3) Effective date of service connection, provided VA receives evidence that the veteran or survivor meets the residency and citizenship or permanent resident alien status requirements in § 3.42 within one year of the date of notification of the decision establishing service connection.

(b) *Resumption of full-dollar rate.* (1) Date the veteran or survivor returned to the United States after an absence of more than 60 consecutive days; or

(2) First day of the calendar year following the year in which the veteran or survivor was absent from the United States for a total of 183 days or more, or the first day after that date that the

veteran or survivor returns to the United States.

[71 FR 8221, Feb. 16, 2006]

APPORTIONMENTS

§ 3.450 General.

(a)(1) All or any part of the pension, compensation, or emergency officers' retirement pay payable on account of any veteran may be apportioned.

(i) On behalf of his or her spouse, children, or dependent parents if the veteran is incompetent and is being furnished hospital treatment, institutional, or domiciliary care by the United States, or any political subdivision thereof.

(ii) If the veteran is not residing with his or her spouse, or if the veteran's children are not residing with the veteran and the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support.

(2) Where any of the children of a deceased veteran are not living with the veteran's surviving spouse, the pension, compensation, or dependency and indemnity compensation otherwise payable to the surviving spouse may be apportioned.

(Authority: 38 U.S.C. 5307)

(b) Except as provided in § 3.458(e), no apportionment of disability or death benefits will be made or changed solely because a child has entered active duty with the air, military, or naval services of the United States.

(c) No apportionment will be made where the veteran, the veteran's spouse (when paid "as wife" or "as husband"), surviving spouse, or fiduciary is providing for dependents. The additional benefits for such dependents will be paid to the veteran, spouse, surviving spouse, or fiduciary.

(d) Any amounts payable for children under §§ 3.459, 3.460 and 3.461 will be equally divided among the children.

(e) The amount payable for a child in custody of and residing with the surviving spouse shall be paid to the surviving spouse. Amounts payable to a surviving spouse for a child in the surviving spouse's custody but residing with someone else may be apportioned